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May 19, 1987

Alan C. Drew
Chief Relocation Advisor
Department of Transportation
John O. Morton Building
Concord, New Hampshire 03301

RE: Septic System Replacement/Evaluation

Dear Mr. Drew:

By letter dated April 1, 1987, you asked our opinion as to the legal status of a septic system wholly or partially located in a highway right-of-way easement owned by the State. You asked further whether the system's owner would be entitled to compensation in the event that the State had to destroy the system when constructing an improvement to the highway. Finally, you asked our opinion regarding substandard septic systems destroyed as a result of a State taking; specifically: "What relationship (before and after value) does the cost of replacing a septic system to today's standards have on the appraisal of that property?"

I will attempt to answer your questions in order.

Unless it is installed under a written agreement with the State, a septic system wholly located in a right-of-way



easement has the status of a revocable license. As the owner of the easement, the State has the right to do anything with the land consistent with its use as a highway. If a properly authorized improvement to the highway requires the removal of the septic system, the system's owner is not entitled to compensation, because the State is simply exercising a right it has held ever since it acquired the easement. Of course, if the system was built pursuant to a written agreement, the owner's rights will depend on the terms of the agreement.

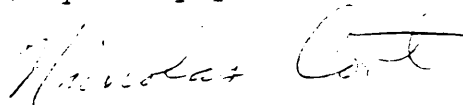
The case of a system partially located on a right-of-way easement is more complex. Any such case should be analyzed when it occurs, rather than in general terms; I will not therefore offer an opinion on the matter at this time.

In the case of a substandard system, there is a distinction between illegal and legal (i.e., "grandfathered") systems. When the State takes land containing an illegal system, the "appraised" value of the land before the taking must reflect the fact that the owner would be obligated to spend money to bring the system into compliance. If the money were not spent, any affected residence would be uninhabitable, and its value correspondingly reduced.

The effect of a legal substandard system may vary widely from case to case, and should be evaluated by each appraiser according to standard appraisal practice. If the State's installation of a new, up-to-standard system results in a benefit to the property from an appraiser's viewpoint, that fact may be reflected in the value assigned to the property after the taking, and may result in a lower assessment of damages than would otherwise have been the case.

I hope this has been responsive to your concerns. If you have any questions, please call me.

Very truly yours,



Nicholas Cort
Assistant Attorney General

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